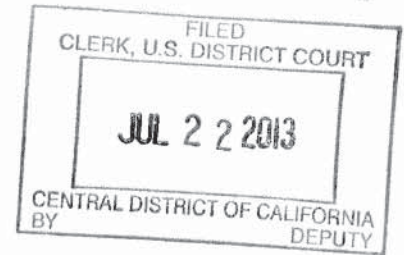


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Attorneys for Defendant and Third-Party Plaintiff TV One, LLC

**UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

GOODNESS FILMS, LLC, a California  
Limited Liability Company; HERBERT  
HUDSON, an individual; PAUL  
GOLDSBY, an individual; and  
KENNEDY GOLDSBY, an individual

Plaintiffs,

v.

TV ONE, LLC, a Maryland Limited  
Liability Company; MIGUEL A. NUÑEZ,  
JR., an individual; and EDWIN B. "ED."  
WEINBERGER, an individual,

Defendants.

TV ONE, LLC, a Maryland Limited  
Liability Company,

Third-Party Plaintiff,

v.

MY BELLE'S LLC, a California Limited  
Liability Company, Edwin B. "ED."  
Weinberger, an individual,

Third-Party Defendants.

No. CV 12-08688-GW (JEMx)

**TV ONE, LLC'S FIRST AMENDED  
THIRD-PARTY COMPLAINT FOR:  
(1) CONTRACTUAL INDEMNITY;  
(2) BREACH OF CONTRACT;  
(3) BREACH OF THE IMPLIED  
COVENANT OF GOOD FAITH  
AND FAIR DEALING;  
(4) ANTICIPATORY BREACH OF  
CONTRACT**

Honorable George H. Wu

Courtroom 10

1 Defendant and Third-Party Plaintiff TV One, LLC ("TV One"), through its  
2 undersigned counsel, hereby alleges as follows:

3 **PARTIES**

4 1. TV One is a limited liability company organized and existing under the  
5 laws of the State of Maryland with its principal place of business in Silver Spring,  
6 Maryland. TV One is an American television channel that targets African American  
7 adults.

8 2. TV One is informed and believes, and based thereon alleges, that My  
9 Belle's LLC ("My Belle's") is a limited liability company organized and existing  
10 under the laws of the State of California, with its principal place of business in Los  
11 Angeles, California, and at all relevant times was an entertainment company engaged  
12 in the business of the development and production of television programs. TV One is  
13 also informed and believes, and based thereon alleges, that My Belle's was specifically  
14 created by Defendants Núñez and Weinberger to develop and produce the television  
15 show *Belle's* ("*Belle's*").

16 3. TV One is informed and believes, and based thereon alleges, that Edwin  
17 B. "Ed." Weinberger is an individual, with a principal place of residence within the  
18 County of Los Angeles, California. TV One is also informed and believes that  
19 Defendant Weinberger is, and at all relevant times was, President and Chief Executive  
20 Officer of My Belle's.

21 **JURISDICTION AND VENUE**

22 4. This is a third-party action for contractual indemnity, breach of contract,  
23 breach of the implied covenant of good faith and fair dealing, and anticipatory breach  
24 of contract brought under Rule 14 of the Federal Rules of Civil Procedure. This court  
25 has supplemental jurisdiction over this third-party complaint pursuant to 28 U.S.C. §  
26 1367.

27 5. Venue is appropriate in this district because these claims are supplemental  
28 to the plaintiffs' original claims. Venue is also appropriate pursuant to 28 U.S.C. §



1 1391(b) because a substantial part of the events giving rise to this third-party complaint  
2 occurred in this district, and TV One is informed and believes, and based thereon  
3 alleges, that My Belle's principal place of business is in this district and Defendant  
4 Weinberger's principal place of residence is in this district.

### 5 BACKGROUND

6 6. On February 28, 2012, TV One and My Belle's entered a development  
7 agreement to develop, produce, and broadcast *Belle's* on TV One ("Development  
8 Agreement").

9 7. On May 1, 2012, TV One and My Belle's entered a Production  
10 Agreement, detailing the production and delivery of seven *Belle's* episodes to TV One  
11 ("Production Agreement").

12 8. Paragraph 6 of the Production Agreement requires that My Belle's obtain  
13 and maintain valid insurance and name TV One as an additional insured.

14 9. Paragraph 9 of the Production Agreement provides that:

15 Producer [My Belle's] shall at all times defend, indemnify and hold  
16 Company [TV One], its related and affiliated companies and entities, and the  
17 officers, directors, members, agents and employees of each, harmless from  
18 and against any and all claims, damages, liabilities, costs and expenses,  
19 including reasonable counsel fees (collectively, "Damages"), arising out of  
20 any breach or alleged breach of any of the representations or warranties  
21 made by [My Belle's] under this Agreement or any negligent, reckless or  
22 willful misconduct of [My Belle's] or its agents, employees, guests or  
23 invitees. [TV One] shall at all times defend, indemnify and hold [My  
24 Belle's], its officers, directors, members, agents and employees harmless  
25 from and against any and all Damages arising out of [TV One]'s distribution  
26 or exploitation of the Programs [*Belle's* episodes], other than in connection  
27 with any such Damages that result from: (i) any material supplied by [My  
28 Belle's] and/or Executive Producer [Edward Weinberger] (i.e., material  
which was not furnished by [TV One] to [My Belle's] or material in which  
no additions or alternations were made by or under [TV One]'s authority);  
(ii) [My Belle's] and/or [Edward Weinberger] acting outside the scope of  
their engagement hereunder or contrary to [TV One]'s instructions; (iii) any



1 breach of [My Belle's] and [Edward Weinberger]'s warranties and  
2 representations; or (iv) gross negligence recklessness and/or other  
3 intentional tortious acts or omissions committed by [My Belle's] and/or  
4 [Edward Weinberger] and/or any agent, employee, guest or invitee of [My  
5 Belle's] and/or [Edward Weinberger]. In the event of any claim or service  
6 of process upon a party involving the indemnification set forth herein, the  
7 party receiving such notice shall promptly notify the other of the claim. The  
8 indemnitor will promptly adjust, settle, defend or otherwise dispose of such  
9 claim at its sole cost. If it so elects, the indemnitee shall have the right, at its  
10 sole cost to engage its own counsel in connection with such claim. In the  
11 event that the indemnitee determines that the indemnitor is not diligently and  
12 continuously defending any such claim, the indemnitee shall have the right,  
13 on its own behalf and as attorney-in-fact for indemnitor, to adjust, settle,  
14 defend or otherwise dispose of such claim. Any costs incurred by the  
15 indemnitee in connection therewith shall be promptly reimbursed by the  
16 indemnitor, and if the indemnitor fails to so reimburse the indemnitee, the  
17 indemnitee shall be entitled to deduct such amounts from any other sums  
18 payable to the indemnitor under this Agreement.

19 10. Paragraph 10.2 of the Production Agreement provides that "[My Belle's]  
20 warrants, represents and agrees for the benefit of TV One" that the *Belle's* episodes do  
21 not violate or infringe any copyright of any person or entity.

22 11. Defendant Weinberger signed the Production Agreement as "President &  
23 CEO" of My Belle's. On page 19 of the Production Agreement, Defendant  
24 Weinberger agreed to be personally liable to the terms and conditions of the  
25 Production Agreement by agreeing to and acknowledging the following terms:

26 As a material inducement to [TV One] to execute the above Agreement, I  
27 acknowledge that I have read this Agreement and approve the same and  
28 agree to be personally bound by the terms and conditions contained therein.  
Without in any way limiting the generality of the foregoing, I confirm all  
grants, representations, warranties and agreements made by [My Belle's]. I  
agree to look solely to [My Belle's] for any and all compensation that may  
be due me by virtue of the Agreement or my services or grant of rights  
thereunder or my undertakings and agreements herein contained. My  
agreements above made shall inure to the benefit of [TV One], its successors



1 and assigns. If [My Belle's] becomes insolvent or ceases to exist, then [TV  
2 One] may, at its election, deem me substituted as a direct party hereto in lieu  
3 of [My Belle's]. For purposes of any and all Workers' Compensation  
4 statutes, laws, or regulations ("Workers' Compensation"), I acknowledge  
5 that an employment relationship exists between [My Belle's] and I, [My  
6 Belle's] being my special employer under the Agreement. Accordingly, I  
7 acknowledge that in the event of my injury, illness, disability, or death  
8 falling within the purview of Workers' Compensation, my rights and  
9 remedies (and those of our respective heirs, executors, administrators,  
10 successors, and assigns) against [My Belle's], [TV One] and/or their  
11 affiliated companies and their respective officers, agents, and employees  
12 (including, without limitation, any other special employee and any  
13 corporation or other entity furnishing to Producer or an affiliate company the  
14 services of any such other special employee) shall be governed by and  
15 limited to those provided by Workers' Compensation.

16 12. TV One fully performed all of its obligations under the Production  
17 Agreement by honoring all payment agreements and broadcasting completed episodes  
18 of *Belle's* on the TV One television network.

19 13. On or about September 5, 2012, Plaintiffs Goodness Films, LLC, Herbert  
20 Hudson, Paul Goldsby, and Kennedy Goldsby (collectively "Plaintiffs"), through  
21 counsel, notified TV One that they were preparing to file their original complaint.

22 14. On September 6, 2012, TV One promptly notified Defendants Núñez and  
23 Weinberger and My Belle's of TV One's intention to seek indemnification from My  
24 Belle's for any damages, including attorneys' fees and associated costs, that it may  
25 suffer as a result of defending against Plaintiffs' claims.

26 15. Upon information and belief, on or about September 11, 2012, nearly four  
27 months after entering the Production Agreement with TV One, My Belle's obtained an  
28 Errors and Omissions insurance policy ("Insurance Policy"), to insure the production  
of *Belle's*, and named TV One as an additional insured. My Belle's application for the  
Insurance Policy did not disclose Plaintiffs' correspondence or claims.

1           16. On October 10, 2012, Plaintiffs filed the original Complaint against  
2 Defendants TV One, Weinberger and Núñez (collectively “Defendants”), alleging,  
3 inter alia, that the *Belle’s* episodes violated Plaintiffs’ copyright for their television  
4 show concept entitled “Roscoe’s House of Chicken and Waffles” (“Roscoe’s Show  
5 Concept”). The gravamen of Plaintiffs’ claims, nearly all of which are directed  
6 towards Defendants Weinberger and Núñez, is that Defendants Weinberger and Núñez  
7 misappropriated Plaintiffs’ idea for the Roscoe’s Show Concept and then pitched the  
8 idea to TV One as their own. Specifically, Plaintiffs alleged that while negotiating his  
9 services to polish Plaintiffs’ script, Defendant Weinberger copied the idea and main  
10 theme of the Roscoe’s Show Concept and sold it to TV One as *Belle’s*. The Complaint  
11 alleged that TV One would violate Plaintiffs’ intellectual property rights by  
12 broadcasting *Belle’s*.

13           17. On or about November 6, 2012, TV One, through counsel, sent another  
14 letter to counsel for Defendants Weinberger and Núñez notifying them of their  
15 obligations under the Production Agreement to indemnify TV One for any damages  
16 incurred by TV One as a result of Plaintiffs’ copyright claims. TV One reserved all  
17 rights and remedies and specifically requested that My Belle’s be brought into the  
18 lawsuit.

19           18. On or about November 8, 2012, Defendant Weinberger, President and  
20 Chief Executive Officer of My Belle’s, through counsel, sent a letter to TV One  
21 asserting that neither My Belle’s nor Defendant Weinberger were required to  
22 indemnify TV One for Plaintiffs’ copyright claims.

23           19. On December 27, 2012, the Court denied Plaintiffs’ Motion for a  
24 Preliminary Injunction. After three motions to dismiss and three amended complaints,  
25 the only remaining claims alleged against TV One by Plaintiffs are for copyright  
26 infringement – direct, vicarious and contributory – for broadcasting *Belle’s*.  
27  
28



1           20. On or about May 16, 2013, TV One filed a claim as an additional insured  
2 pursuant to the Insurance Policy, noting the complaint and that TV One's alleged  
3 infringement took place when *Belle's* aired.

4           21. On or about June 11, 2013, TV One's claim under the Insurance Policy  
5 was denied on the grounds that the Insurance Policy does not afford coverage of TV  
6 One's claim.

7           22. On or about June 28, 2013, TV One sought reconsideration, seeking  
8 coverage as an additional insured.

9           23. On or about July 18, 2013, TV One's claim was again denied on the  
10 grounds that Defendants Weinberger and My Belle's failed to include material  
11 information in its application for the Insurance Policy, because Defendants did not  
12 disclose Plaintiffs' correspondence or claims.

13           24. Plaintiffs are seeking money damages from TV One in connection with  
14 their copyright claims, the exact amount of which is unknown at this time. TV One  
15 has incurred and will continue to incur damages, including but not limited to those  
16 defined by the Production Agreement, attorneys' fees, court costs, expert witness fees  
17 and other costs and damages in connection with defending Plaintiffs' copyright claims,  
18 the exact amount of which is unknown at this time.

19                           **FIRST CAUSE OF ACTION**  
20                           (Contractual Indemnity)

21           25. TV One re-alleges and incorporates by reference as though fully set forth  
22 herein paragraphs 1-24, inclusive.

23           26. TV One and My Belle's entered into a valid Production Agreement  
24 containing provisions which require My Belle's to indemnify TV One at all times for  
25 damages related to the defense of claims for copyright infringement related to the  
26 development, production and broadcast of *Belle's*.

27           27. Pursuant to the Production Agreement, Defendant Weinberger agreed to  
28 be personally bound by the terms and conditions of the Production Agreement, and to

1 personally indemnify TV One at all times in place of My Belle's at the sole election of  
2 TV One.

3 28. The Production Agreement was in full force and binding on all parties at  
4 all relevant times.

5 29. TV One fully performed all conditions, obligations and duties under the  
6 Production Agreement.

7 30. TV One has incurred and continues to incur damages as a result of  
8 defending against Plaintiffs' copyright infringement claims.

9 31. TV One notified My Belle's and Defendant Weinberger of their  
10 obligation to indemnify TV One pursuant to the Production Agreement.

11 32. Defendant Weinberger, on behalf of himself and My Belle's, asserted that  
12 neither he nor My Belle's would indemnify TV One at any time.

13 33. By reason of the foregoing, TV One is entitled to recover from My Belle's  
14 or Defendant Weinberger any amount recovered by Plaintiffs from TV One in  
15 connection with Plaintiffs' copyright claims, in addition to such reasonable attorneys'  
16 fees, court costs, and other litigation expenses necessarily incurred in defending  
17 against Plaintiffs' copyright claims, the amount of which is to be determined. The  
18 amount of said expenses is unknown at this time and TV One reserves its right to seek  
19 leave of the court to amend this third-party complaint when the exact amount of TV  
20 One's damages can be ascertained.

21 **SECOND CAUSE OF ACTION**  
22 (Breach of Contract)

23 34. TV One re-alleges and incorporates by reference as though fully set forth  
24 herein paragraphs 1-33, inclusive.

25 35. TV One and My Belle's entered into a valid Production Agreement  
26 containing provisions which require My Belle's to obtain and maintain valid insurance  
27 and name TV One as an additional insured.  
28



1           36. The Production Agreement was in full force and binding on all parties at  
2 all relevant times.

3           37. TV One fully performed all conditions, obligations and duties under the  
4 Production Agreement.

5           38. On or about September 11, 2012, nearly four months after entering the  
6 Production Agreement with TV One, My Belle's obtained the Insurance Policy, to  
7 insure the production of *Belle's*, and named TV One as an additional insured.

8           39. Upon information and belief, My Belle's application for the Insurance  
9 Policy did not include material information, as it did not disclose Plaintiffs'  
10 correspondence or claims, and, per the insurer, the Insurance Policy is not valid as to  
11 TV One's claim.

12           40. My Belle's failed to obtain and maintain valid insurance naming TV One  
13 as an additional insured, thereby breaching the Production Agreement.

14           41. My Belle's breach of the Production Agreement has caused TV One to be  
15 unable to recover as an additional insured pursuant to the Insurance Policy.

16           42. TV One has incurred and continues to incur damages as a result of  
17 defending against Plaintiffs' copyright infringement claims.

18           43. By reason of the foregoing, TV One is entitled to recover from My Belle's  
19 or Defendant Weinberger any amount recovered by Plaintiffs from TV One in  
20 connection with Plaintiffs' copyright claims, in addition to such reasonable attorneys'  
21 fees, court costs, and other litigation expenses necessarily incurred in defending  
22 against Plaintiffs' copyright claims, the amount of which is to be determined. The  
23 amount of said expenses is unknown at this time and TV One reserves its right to seek  
24 leave of the court to amend this third-party complaint when the exact amount of TV  
25 One's damages can be ascertained.

26 //

**THIRD CAUSE OF ACTION**

(Breach of the Implied Covenant of Good Faith and Fair Dealing)

44. TV One re-alleges and incorporates by reference as though fully set forth herein paragraphs 1-43, inclusive.

45. California law implies a duty of good faith and fair dealing in every contract.

46. My Belle's and Defendant Weinberger each affirmatively agreed to indemnify TV One at all times for damages related to the defense of claims for copyright infringement related to the development, production and broadcast of *Belle's*.

47. My Belle's and Defendant Weinberger's representations caused TV One to rely on these statements and erroneously believe that My Belle's and Defendant Weinberger would indemnify TV One. Defendant Weinberger also affirmatively agreed to be personally bound by the terms and conditions of the Production Agreement, and to personally indemnify TV One at all times in place of My Belle's at the sole election of TV One.

48. After affirmatively agreeing to indemnify TV One, My Belle's and Defendant Weinberger stated their intention not to indemnify TV One at any time for any potential award against TV One related to Plaintiffs' copyright claims, or for the costs of defending against Plaintiffs' copyright claims. As a result of My Belle's and Defendant Weinberger's subsequent affirmative representations that they would not indemnify TV One, My Belle's and Defendant Weinberger breached their implied duty of good faith and fair dealing. TV One has been and continues to incur damages, the amount of which is to be determined.

**FOURTH CAUSE OF ACTION**

(Anticipatory Breach of Contract)  
Plead in the Alternative

49. TV One re-alleges and incorporates by reference as though fully set forth herein paragraphs 1-24, inclusive.



1           50. TV One and My Belle's entered into a valid Production Agreement  
2 containing provisions which require My Belle's to indemnify TV One at all times for  
3 damages related to the defense of claims for copyright infringement related to the  
4 development, production and broadcast of *Belle's*.

5           51. Pursuant to the Production Agreement, Defendant Weinberger agreed to  
6 be personally bound by the terms and conditions of the Production Agreement, and to  
7 personally indemnify TV One at all times in place of My Belle's at the sole election of  
8 TV One.

9           52. The Production Agreement was in full force and binding on all parties at  
10 all relevant times.

11           53. TV One fully performed all conditions, obligations and duties under the  
12 Production Agreement.

13           54. TV One has incurred and continues to incur damages as a result of  
14 defending against Plaintiffs' copyright infringement claims.

15           55. TV One notified My Belle's and Defendant Weinberger of their  
16 obligation to indemnify TV One pursuant to the Production Agreement.

17           56. Defendant Weinberger, on behalf of himself and My Belle's, asserted that  
18 neither he nor My Belle's would indemnify TV One at any time.

19           57. Defendant Weinberger and My Belle's clearly, positively, and  
20 unequivocally stated their intention to affirmatively repudiate their obligation to at all  
21 times indemnify TV One pursuant to the Production Agreement.

22           58. By reason of the foregoing, TV One is entitled to recover from My Belle's  
23 or Defendant Weinberger any amount recovered by Plaintiffs from TV One in  
24 connection with Plaintiffs' copyright claims, in addition to such reasonable attorneys'  
25 fees, court costs, and other litigation expenses necessarily incurred in defending  
26 against Plaintiffs' copyright claims, the amount of which is to be determined. The  
27 amount of said expenses is unknown at this time and TV One reserves its right to seek  
28

1 leave of the court to amend this third-party complaint when the exact amount of TV  
2 One's damages can be ascertained.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, TV One prays for judgment against all defendants as follows:


- 5 1. For complete contractual indemnity from My Belle's or Defendant  
6 Weinberger for any amount recovered by Plaintiffs from TV One in  
7 connection with Plaintiffs' claims, and for all costs associated with  
8 defending against Plaintiffs' claims, including all costs of defense and of  
9 prosecution of this third-party claim, including all attorneys' fees and  
10 expert fees;
  - 11 2. For any damages suffered by TV One resulting from any breach of any  
12 express or implied warranties by My Belle's and Defendant Weinberger;
  - 13 3. For costs of suit incurred herein, including, but not limited to, costs  
14 incurred in the prosecution of this third-party complaint;
  - 15 4. For interest thereon, at the maximum legal rate; and
  - 16 5. For such other relief as the Court may deem just and proper.
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1 DATED: July 22, 2013

Respectfully Submitted,

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3  
4 **NIXON PEABODY LLP**

5  
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